

Internal Revenue Service

Department of the Treasury

Contact Person:

Telephone Number:

In Reference to:

Date:

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(3) of the Internal Revenue Code.

You were incorporated [redacted] under the laws of the state of [redacted]. Your purposes, as stated in your articles of incorporation, are to "raise funds and pursue activities related to the promotion, support, and sponsorship of youth amateur athletics."

Proposed budgets submitted with your letter of November 23, 1996 indicate that you [redacted]

Your proposed budgets refer to donations to [redacted] presumably a reference to [redacted] yet at other points in the letter you state that you will make donations to other, unspecified, competitive teams in baseball and softball. You state that these teams "do not have exempt status, but use the [redacted] for some of their fund raising."

In your application for exemption, you requested classification as a supporting organization under section 509(a)(3) of the Code. You have declined consideration as a publicly supported organization under any other provision of the Code. You have refused to complete Form 872-C, Consent Fixing Period of Limitation Upon Assessment of Tax Under Section 4940 of the Internal Revenue Code.

Organizational Test

Section 501(c)(3) of the Internal Revenue Code describes, in relevant part, corporations organized and operated exclusively for charitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

[REDACTED]

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization limit the purposes of such organization to one or more exempt purposes and do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(1)(iv) of the regulations provides that in no case shall an organization be considered to be organized exclusively for one or more exempt purposes, if, by the terms of its articles, the purposes for which such organization is created are broader than the purposes specified in section 501(c)(3). The fact that the actual operations of such an organization have been exclusively in furtherance of one or more exempt purposes shall not be sufficient to permit the organization to meet the organizational test.

Although you have agreed to do so, you have not amended your articles of incorporation to meet the requirements of the organizational test. Your purposes, as stated in your articles, are too broadly worded to necessarily fall within the purposes enumerated in section 501(c)(3) of the Code.

Operational Test

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(e)(1) of the regulations provides that an organization may meet the requirements of section 501(c)(3) although it operates a trade or business as a substantial part of its activities, if the operation of such trade or business is in furtherance of the organization's exempt purpose or purposes and if the organization is not organized or operated

[REDACTED]

for the primary purpose of carrying on an unrelated trade or business as defined in section 513. In determining the existence or nonexistence of such primary purpose, all the circumstances must be considered, including the size and extent of the trade or business and the size and extent of the activities which are in furtherance of one or more exempt purposes. An organization which is organized and operated for the primary purpose of carrying on an unrelated trade or business is not exempt under section 501(c)(3)

Harding Hospital, Inc. v. United States, 505 F2d 1068 (1974) holds that an organization seeking a ruling as to recognition of its tax exempt status has the burden of proving that it satisfies the requirements of the particular exemption statute. Whether an organization has satisfied the operational test is a question of fact.

Rev. Rul. 64-182, 1964-1 C.B. 186 provides that an organization will satisfy the primary purposes test of section 1.501(c)(3)-1(e) of the regulations and be entitled to exemption from federal income taxation as an organization organized and operated exclusively for charitable purposes where it is shown to be carrying on a charitable program commensurate in scope with its resources.

Rev. Rul. 68-489, 1968-2 C.B. 210, describes an organization that distributes funds to nonexempt organizations. The exempt organization ensured use of the funds for section 501(c)(3) purposes by limiting distributions to specific projects that are in furtherance of its own exempt purposes. It retains control and discretion as to the use of the funds and maintains records establishing that the funds were used for section 501(c)(3) purposes. The Service concludes that the organization's exemption under section 501(c)(3) of the Code will not be in jeopardy even though it distributes funds to nonexempt organizations, provided it retains control and discretion over use of the funds for section 501(c)(3) purposes.

Rev. Proc. 90-27, 1990-1 C.B. 514, Section 5.02, states that exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. A mere restatement of purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement. The organization must fully describe the activities in which it expects to engage, including the standards, criteria, procedures or other means

[REDACTED]

adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

You have been unable to describe your proposed operations in sufficient detail to permit a conclusion that you will meet the requirements of section 501(c)(3) of the Code. See Rev. Proc. 90-27. The operation of a concession stand and the sale of [REDACTED] are not activities that, in themselves, further any exempt purpose under section 501(c)(3) of the Code. An organization may, however, be exempt under section 501(c)(3) where its sole source of support is from such activities, if it accomplishes exclusively charitable purposes by raising funds through such activities and contributing funds derived therefrom to support charitable organizations. See Rev. Rul. 64-182. This form of indirect support of charity is itself a charitable activity justifying exemption under section 501(c)(3) if it is commensurate in scope with the organization's resources. However, you have stated that you will be making contributions to organizations that are not themselves tax-exempt. You have presented no evidence that you will maintain any control or discretion over the use of these funds in order to ensure that they are used solely for charitable purposes. See Rev. Rul. 68-489.

Private Foundation Classification

Section 509(a) of the Code provides that the term "private foundation" means an organization described in section 501(c)(3) other than certain organizations described in section 509(a)(1), (2), (3), or (4).

Section 509(a)(3) of the Code excludes from the definition of a private foundation an organization which is operated, supervised, or controlled by or in connection with one or more organizations described in section 509(a)(1) or 509(a)(2).

You are not operated, supervised, or controlled by or in connection with any other organization. Therefore, you are not described in section 509(a)(3) of the Code. Since you have declined to be considered under any other Code section, we must conclude that you are a private foundation. Because you refused to sign Form 872-C, we would in any case be unable to issue an advance ruling on your status and you lack sufficient operating history (since your date of incorporation) to qualify for a definitive ruling.

Accordingly, based on all the facts and circumstances, we conclude that you do not qualify for recognition of exemption under section 501(c)(3) of the

[REDACTED]

Code. Contributions to you are not deductible under section 170 and you are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If you do not protest this proposed ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgement or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to that office. The appropriate State officials will be notified of this action in accordance with section 6104(c) of the Code.

You will expedite our receipt of your reply by using the following address on the envelope:

[REDACTED]

Sincerely yours,

[REDACTED]